

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

and

THE ATTORNEY GENERAL FOR ONTARIO

Appellant (Intervener)

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JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH
SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE
MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER
HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND
PERSONS UNKNOWN

Respondents
(Respondents/Cross-Applicants)

**FACTUM IN SUPPORT OF THE MOTION FOR LEAVE TO INTERVENE OF THE
ADVOCACY CENTRE FOR TENANTS ONTARIO**

October 20, 2026

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PART I – OVERVIEW

1. The moving party, the Advocacy Centre for Tenants Ontario (“ACTO”), seeks leave to intervene in this appeal pursuant to Rules 13.01 or, in the alternative, Rule 13.02, and 13.03 (2) of the *Rules of Civil Procedure*.

Rules of Civil Procedure, ss 13.01, 13.02, 13.03(2)

2. The availability of affordable long-term and stable housing is partly constituted by legislative choices. This appeal concerns the constitutional validity of a site-specific municipal by-law (“the By-law”) that purports to require the closure of a homeless encampment. If the findings of infringements of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (“the Charter”) are upheld, the Court must determine whether those infringements are demonstrably justified under section 1. ACTO’s proposed contribution will help to ensure that the benefits of the By-law are assessed against the actual consequences of the limitation for people whose housing choices are severely constrained.

3. ACTO seeks to address issues raised by the parties, and in particular:

a. Whether the Application Judge erred in his analysis of section 1 of the *Charter*.

PART II – SUMMARY OF FACTS

4. ACTO is a non-partisan and non-governmental specialized legal clinic, funded by Legal Aid Ontario. Since its inception in 2001, ACTO’s mandate has been to represent the interests of low-income Ontarians, including homeless persons, in housing and residential tenancies law. In sum, ACTO provides:

- i. Direct legal services, including summary advice, research, and limited representation for tenants with hearings at the Landlord and Tenant Board, through the Tenant Duty Counsel Program;
- ii. Representation and intervention in appellate level test case and public interest litigation;
- iii. Public policy and law reform advocacy;
- iv. Public legal education, training, and community organization in relation to housing and shelter rights.

Motion Record of the Proposed Intervener, (“MROI”), Tab 2, Affidavit of Douglas Kwan, (“*Affidavit of Douglas Kwan*”), affirmed on October 20, 2026, at paras 6, 7-16, pp 2-6

5. ACTO’s mandate with respect to the provision of legal services more broadly is to provide support and leadership within the provincial legal clinic system by litigating cases with the potential to affect the rights of low-income Ontarians with respect to housing and shelter. In fulfilling this mandate, ACTO has acted for clients of legal aid clinics in appeals and applications for judicial review of decisions of the Landlord and Tenant Board and intervened in cases with implications for low-income tenants and homeless persons at the Ontario Divisional Court, the Ontario Court of Appeal, and the Supreme Court of Canada.

MROI Tab 2, *Affidavit of Douglas Kwan*, at para 22, pp 8-11

6. Cases where ACTO has either represented a tenant or intervened include:¹

¹ Please see paragraph 23 of the *Affidavit of Douglas Kwan*, MROI, Tab 2, p 8-11 for a more detailed and fulsome list of cases where ACTO has acted for a party or as an intervener.

a. Arguelles v. The Estate of Ann Miller, [2026 ONCA 518](#): ACTO represented the tenant at Divisional Court and on appeal to the Ontario Court of Appeal, arguing that the death of the landlord rendered the eviction application for landlord's own use invalid and that the Board lacked the jurisdiction to hear the matter due to the landlord's non-compliance with a mandatory statutory requirement. The Court granted the appeal, emphasizing the tenant-protective purpose of the RTA.

b. Browne v Henley Crescent, [2026 ONSC 455](#): ACTO represented a tenant facing eviction from her longstanding matrimonial home after her husband was removed by police for domestic violence. Her husband gave the landlord notice to end the tenancy, enabling the landlord to obtain an eviction order. This left the tenant with the choice of being evicted or entering into a new tenancy agreement that would double her rent, due to vacancy decontrol. ACTO was successful in persuading the Court to restore the tenancy. The Court ruled that in some circumstances, a remaining spouse can stay in the home under the terms of the original tenancy instead of having to commence a new tenancy with higher rent. This outcome is particularly significant for survivors of gender-based violence.

c. Yatar v. TD Insurance Meloche Monnex, [2024 SCC 8](#): ACTO was granted leave to intervene at both the Ontario Court of Appeal and Supreme Court of Canada, contributing a unique perspective on access to justice. The Supreme Court decision upholds the principle from *Vavilov* that a statutory right of appeal does not preclude an individual from seeking judicial review, leaving this option intact for vulnerable tenants to challenge questions of mixed fact and law in decisions that affect their housing.

d. Elkins v. Van Wissen, [2023 ONCA 789](#): Representing the former tenant, ACTO was granted leave to appeal and achieved a positive impact for tenants across Ontario who are facing bad faith eviction applications for landlords' and purchasers' own use.

MROI, Tab 2, *Affidavit of Douglas Kwan*, at para 23, pp 8-11

7. In addition to direct legal services, ACTO is a resource for legal aid clinics across the province and other community housing organizations. In this role, ACTO conducts research, provides information, consultations, peer review, and assistance in matters pertaining to the legal rights, responsibilities, and needs of low-income people with housing issues.

8. ACTO also conducts and compiles research, develops policy papers, drafts proposals for legislative and policy reform and works with other advocacy organizations to advance the interests of low-income persons in respect of their housing and shelter needs.

MROI, Tab 2, *Affidavit of Douglas Kwan*, at paras 6, 11-12, 13 -16, pp 2-6

PART III – ISSUES AND LAW

9. The issue in this motion is whether ACTO has satisfied the legal test to be granted leave to intervene in this matter.

10. A court may grant leave to add parties as intervenors where they claim:

- a. an interest in the subject matter of the proceeding;
- b. that they may be adversely affected by a judgment in the proceeding; or
- c. that there exists between that person and one or more parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

Rules of Civil Procedure, Rule 13.01

11. A court may also grant leave to allow a person to intervene in a proceeding as a friend of the court for the purposes of assisting the court by way of argument.

Rules of Civil Procedure, Rule 13.02

12. Leave to intervene will be more readily granted where the moving party will not unduly delay or prejudice the determination of the rights of the parties to the proceeding.

Rules of Civil Procedure, Rule 13.01 (2)

13. In determining whether to grant leave to intervene, factors to be considered are:

- a. the nature of the case;
- b. the issues which arise; and
- c. the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.

Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd., (1990) 74 O.R. (2d) 164, per Dubin J

14. Where a public interest group proposes to intervene in a *Charter* case, at least one of the following criteria is usually met by the proposed intervener:

- 1. It has a real substantial and identifiable interest in the subject matter of the proceedings;
- 2. it has an important perspective distinct from the immediate parties; or
- 3. it is a well-recognized group with special expertise and a broadly identifiable membership

Bedford v Canada (Attorney General), 2009 ONCA 669, at para 2

i) *The Nature of the Case:*

15. The constitutional nature of the dispute in this appeal leaves the door slightly more ajar for interveners than if the dispute was of a more private nature. Whether the matter involves a constitutional issue or a private dispute, the same legal test for leave to intervene applies. However, the burden on the moving party in a constitutional case is lighter than when the case is closer to the private dispute end of the continuum. This case has both policy and public interest implications, raising questions about the balance between public safety and private property rights and the responsibilities of governments to ensure actions taken are *Charter*-compliant.

Authorson (Litigation Guardian of) v. Canada (Attorney General) (2001), 147 O.A.C. 355, 9 C.P.C. (5th) 218 (C.A.), at paras 8 and 9

ii) *The Issues which Arise:*

16. The issues engaged in this appeal have broad import for Ontarians, most directly for those who are homeless or at risk of losing their housing or shelter. Beyond the Bylaw's effects on the residents of the encampment at 100 Victoria, this decision stands to impact anyone in the Region of Waterloo or Ontario who is precariously housed, low-income, or at risk of losing their income. More broadly, this appeal engages questions of public safety, the rights of individuals, and the responsibilities of governments to address the structural and systemic causes of homelessness.

iii) *The Likelihood of a Useful Contribution without Prejudice to the Parties:*

17. ACTO can make a useful contribution to the resolution of these issues because it has acquired cumulative expertise in housing legislation, policy and the issues faced by low-income people with respect to their housing and shelter needs. By elucidating aspects of the legislative

and policy landscape that may not otherwise be discernible, ACTO's contribution can augment the Court's constitutional lens through which to evaluate the Bylaw's harms. A meaningful assessment of the proportionality of the Bylaw will benefit from consideration of how the legal framework governing residential tenancies shapes the choices available to those who struggle to secure and maintain housing.²

iv) *A Well-Recognized Group with Special Expertise and a Broadly Identifiable Membership:*

17. ACTO's membership is comprised of the tenants and precariously-housed people we serve, as well as community organizations and housing legal professionals who work in Ontario's legal aid clinic system. Since its inception, ACTO has realized its mandate through multiple and complementary avenues of advocacy, from grassroots community organizing to the highest levels of court. ACTO holds considerable institutional knowledge of housing legislation and policy, reflecting its sustained engagement with its membership base and trusted position as source of knowledge and advocacy in housing law.

MROI, Tab 2, Affidavit of Douglas Kwan, , at paras 5, 9-13, 20-23, pp 3-5 7-11

v) *Proposed Argument:*

18. If granted leave to intervene, ACTO will argue:

1. Since 2018, amendments to the *Residential Tenancies Act* have cumulatively eroded security of tenure and the availability of affordable housing options;
2. These changes have legally and practically constrained individuals' choice of housing.

² See **MROI, Tab 2, Affidavit of Douglas Kwan, affirmed October 19, 2026, Appendix A, Draft Factum of the Proposed Intervener**, for a more detailed description of ACTO's proposed arguments.

3. In assessing the constitutionality of the proposed bylaw, understanding the legislative context enriches the section 1 *Charter* analysis in the following ways:
 - a. In assessing whether the proposed bylaw is minimally impairing, ACTO's submissions demonstrate the extent to which residential tenancy law can prevent housing loss and eviction into homelessness; and
 - b. In assessing whether the benefits of the proposed bylaw outweigh its deleterious effects, ACTO's submissions provide a tool to measure the harm to people whose housing options are already so severely constrained.

PART V – ORDER REQUESTED

19. ACTO requests an order:
 - a. Granting leave to intervene as an added party or, alternatively, as a friend of the Court for the purposes of rendering assistance by way of written and oral argument.;
 - b. That there be no costs on this motion;
 - c. That the moving party will neither seek costs in the appeal, nor have costs awarded against it, regardless of the outcome of the appeal; and
 - d. For such further and other relief as counsel may advise and this Honourable Court may find just and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2026.

Rosalea Thompson

Rosalea Thompson

Court File Nos. COA-26-CV-0836 and COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant
(Applicant/Cross Respondent)

and

THE ATTORNEY GENERAL FOR ONTARIO

Appellant (Intervener)

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HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND
PERSONS UNKNOWN

Respondents
(Respondents/Cross-Applicants)

CERTIFICATE OF ESTIMATE OF TIME REQUIRED

I, Rasalea Thompson hereby certify the following:

1. that I am satisfied as to the authenticity of every authority listed in Schedule “A”;
2. the estimate of time that will be required for the Proposed Intervener’s oral arguments, not including reply is fifteen (15) minutes;
3. that there are 1, 979 words contained in Parts I to V.

DATED AT Toronto, Ontario 20th day of October, 2026.



Rosalea Thompson

SCHEDULE "A" - LIST OF AUTHORITIES

1. *Miller Estate v. Arguelles*, [2026 ONCA 518 \(CanLII\)](#)
2. *Browne v Henley Crescent*, [2026 ONSC 455 \(CanLII\)](#)
3. *Yatar v. TD Insurance Meloche Monnex*, [2024 SCC 8 \(CanLII\)](#)
4. *Elkins v. Van Wissen*, [2023 ONCA 789 \(CanLII\)](#)
5. *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.*, [990 CanLII 6886 \(ON CA\)](#)
6. *Bedford v Canada (Attorney General)*, [2009 ONCA 669 CanLII](#)
7. *Authorson (Litigation Guardian of) v. Canada (Attorney General)*, [2001 CanLII 4382 \(ON CA\)](#)

SCHEDULE “B” - TEXT OF STATUTES, REGULATIONS & BY – LAWS

Rules of Civil Procedure, RRO 1990, Reg 194

RULE 13 INTERVENTION

Leave to Intervene as Added Party

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Leave to Intervene in Divisional Court or Court of Appeal

13.03 (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (1); O. Reg. 292/99, s. 4; O. Reg. 186/10, s. 2; O. Reg. 82/17, s. 16.

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2; O. Reg. 55/12, s. 1; O. Reg. 82/17, s. 16.

...

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

Rights and freedoms in Canada

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

...

Legal Rights

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

...

Equality Rights

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.⁽⁸⁵⁾

...

THE REGIONAL MUNICIPALITY OF WATERLOO
Applicant (Appellant)

- and -

JOSEPHINA DUGAS et al
Respondents (Respondents in Appeal)

Court File No.: COA-26-CV-0836 and COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO
Proceedings commenced at Toronto

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